

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

DELOISE PRICE,

PLAINTIFF

VS.

CASE No. 2:06-CV-721

**WAL-MART STORES, INC.,
et al.,**

DEFENDANTS

**DEFENDANT EXTREME PERFORMANCE, INC.'S
MOTION TO SEAL EXHIBIT**

Comes now the Defendant identified as Extreme Performance, Inc. and moves this Honorable Court to seal the original Exhibit F to its Motion to Dismiss [Doc. 24] and substitute the attached Exhibit F to said Motion. As grounds therefor, Defendant would state as follows:

1. On August 3, 2007, this Defendant filed its Motion to Dismiss [Doc. 24]. Attached to said Motion to Dismiss was Exhibit F, a report from Dr. Tai Chung.
2. Said Exhibit F contains personal information relating to Plaintiff, i.e., Plaintiff's date of birth and Social Security number.
3. The attached replacement Exhibit F has such personal information redacted.

WHEREFORE, this Defendant would request that the attached Exhibit F be substituted for the original Exhibit F and that the original Exhibit F be sealed in order to protect the Plaintiff's personal information.

/s/ Dennis R. Bailey
Dennis R. Bailey
Attorney for Defendant

Of counsel:

RUSHTON, STAKELY, JOHNSTON & GARRETT, P.A.
184 Commerce Street
Post Office Box 270
Montgomery, Alabama 36101-0270
(334) 206-3234 (phone)
(334) 481-0031 (fax)
drb@rsjg.com (e-mail)

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document upon the following counsel of record by placing a copy of same in the United States Mail, first class postage prepaid, on this the 19th day of October, 2007.

Jock M. Smith
Brian P. Strength
Valerie Rucker Russell
Cochran, Cherry, Givens, Smith, Lane & Taylor
Post Office Box 830419
Tuskegee, Alabama 36083

/s/ Dennis R. Bailey
Of counsel

EXHIBIT F

TAI Q. CHUNG, M.D.
American Board of Orthopedic Surgery

6936 Winton Blount Blvd.
Montgomery, AL 36117

Tel: 334-200-2288
FAX: 334-200-9885

Medical Records Review

April 3, 2007

Ms. Kellie B. Schwendner
PO BOX 8
Leds, Alabama 35094

RE: DELOISE PRICE

Dear Ms. Schwendner:

I examined the records sent to my office with your cover letter dated March 22, 2007. The records measured about 3 1/4 inch in thickness.

Records reviewed included the following:

1. Notes by Iqbal J. Singh, M.D., February 12, 2001, February 16, 2001, February 23, 2001, March 2, 2001, March 23, 2001, April 6, 2001, April 10, 2001, April 20, 2001, May 10, 2001, June 27, 2001, August 31, 2001, November 1, 2001, January 28, 2002. These are records of multiple lumbar epidural injections.
2. George Baker, M.D., February 12, 2001, x-rays of the lumbosacral spine showed slight loss of lordosis.
3. Report by R. Glenn Chestnutt, D.C., February 14, 2006. A 72 percent impairment of the whole person was applied.
4. Bibb Allen, M.D., April 5, 2005, CT scan of the lumbar spine with results, "Mild degenerative changes are found."
5. Phillip Piasecki, M.D., February 11, 2005, MRI scan of the lumbar spine with contrast showed shunt catheter at the level of L4/5 and "Questionable minimal arachnoiditis at the level of the shunt."
6. Notes by Zenko Hrynkiw, M.D., April 5, 2005, April 13, 2005. Dr. Hrynkiw initially diagnosed cervical and lumbar radiculopathy. He recommended myelogram and CT scan. On April 13 he noted degenerative changes in the studies and that Ms. Price needs no further neurosurgical attention from him.
7. Byron Machen, M.D., September 17, 2004, right knee MRI scan showed, "Large joint effusion, possible sprain of a mild degree in the medial collateral ligament complex."

DeLoise Price

04/03/07

Page Two

8. Notes from N. Tucker Maddox, M.D., August 20, 2004, October 8, 2004, December 15, 2004, January 17, 2005, January 31, 2005. Operative report January 10, 2005. Operation was right knee arthroscopy and debridement of chondromalacia at the medial femoral condyle and debridement of the medial meniscus tear. Dr. Maddox commented on a "Small posterior medial meniscus tear." He also noted that the articular cartilage at the medial femoral condyle was delaminated and very soft."
9. Notes by Jeffrey Profsky, M.D., February 8, 2005, February 11, 2005, March 18, 2005.
10. Note by Robert Bradley, M.D., March 28, 2005.
11. David Herrick, M.D., February 25, 2005, May 6, 2005. Dr. Herrick notes that the MRI scan of the cervical spine showed small osteophytes of C4/5 and C5/6 with no herniation. The lumbar spine MRI scan showed some arachnoiditis at the level of the shunt. There were two epidural injections done on two separate days to the lumbar spine.
12. Notes by Michael Dunning, PT, at HealthSouth, January 24, 2005, February 9, 2005, February 11, 2005, February 18, 2005, February 23, 2005, March 1, 2005, March 17, 2005, April 6, 2005, April 12, 2005, May 18, 2005, May 20, 2005, May 25, 2005, June 1, 2005, June 3, 2005, July 8, 2005, July 13, 2005.
13. David Downes, M.D., July 22, 2004, MRI scan of the lumbar spine without contrast. "Unremarkable lumbar spine."
14. PT Bills from July 1, 2005, through August 25, 2005, for a total amount of \$3823 for 22 visits.
15. Notes from the Sturbridge Chiropractic, July 1, 2005, July 6, 2005, July 8, 2005, July 11, 2005, July 12, 2005, July 13, 2005, July 14, 2005, July 18, 2005, July 19, 2005, July 21, 2005, July 22, 2005, July 25, 2005, July 27, 2005, July 28, 2005, August 1, 2005, August 2, 2005, August 4, 2005, August 5, 2005, August 8, 2005, August 11, 2005, August 15, 2005, August 18, 2005, August 22, 2005, August 24, 2005.
16. Pineapple Health Center, August 12, 2005, December 2, 2005, June 2, 2005, August 2, 2005, September 15, 2005, October 20, 2005, March 25, 2004, February 19, 2004. In the note of August 12, 2005, there was complaint of back pain and knee pain after she fell off an exercise bike.
17. Joe Rose, PT, February 22, 1999, through March 16, 1999. This is therapy for a left foot injury.
18. Steven Bryan, neurology, December 14, 1999. EMG/NCV of lower extremity was normal for left foot injury.
19. Jamaal Abdel-Halim, M.D., March 17, 2000. EMG/NCV studies of the upper extremity and low extremities conclusion was normal EMG/NCV, study consistent with sensory neuropathy in the lower extremities and left upper extremity and mild bilateral carpal tunnel syndrome. Also mentioned in these notes was "Pseudotumor cerebri diagnosed in 1975, status post VP shunt placed at that time."
20. Nancy Hallow, M.D., March 6, 2000, lumbar spine x-ray degenerative changes involving the left lower lumbar facet joints.

Deloise Price

04/03/07

Page Three

- 21 C. Hodnett, M.D., September 6, 2000, MRI scan of the lumbar spine, "Essentially normal MRI of the lumbar spine."
- 22 Bone scan January 8, 2001, moderate facet abnormal uptake along the left side L5/S1 level consistent with arthritic changes.
- 23 Bills from the Vaughan Regional Medical Center, March 20, 2000, through August 31, 2000.
- 24 Reports from the Thomasville Hospital in Thomasville, Alabama, by James C. Prescott, M.D., February 22, 1990, admission for contusion in the head and possible concussion. April 15, 1989, through April 18, 1989, admission for nausea and vomiting. ER visit for chest pain January 20, 1989.
- 25 Lester Littell, M.D., October 31, 2000 and January 29, 2000, visits for left foot contusion, January 8, 2001, bone scan was normal
- 26 Notes from J. Paul Jones Hospital in Camden, Alabama, November 28, 1998, March 3, 2000, July 4, 2000, there was notes of sciatica on March 3, 2000, and lumbar spine x-rays by Dr. Nancy Hallow, March 6, 2000.
- 27 Notes from Dr. Roseanne Cook, June 26, 1998, through September 14, 2000. A note on January 6, 2000, noted complaints of back and left leg pain

Chief Complaint: The patient is a 56 year-old lady who complains of pain in her neck, back, right knee and left shoulder. She apparently claimed this happened after an accident on June 26, 2004, when she had an accident on a bike that she was using. She said that the handlebar broke and she injured her various parts in the process. She then sought treatment with multiple physicians. She had surgery by Dr. Maddox on January 10, 2005, for a right knee arthroscopy and debridement. Dr. Maddox noted small posterior medial meniscus tear and delaminated and very soft articular cartilage at the medial femoral condyle. Ms. Price had evaluation by Dr. Profsky, Dr. Bradley and Dr. Hrynkiw for a neck and back problem. Treatment was conservative. The neurosurgeon, Dr. Hrynkiw specifically stated that neurosurgically he had nothing to add from the treatment standpoint. MRI scan of the cervical spine showed, by report, osteophytes at the C4/5 and C5/6 level. MRI scan of the lumbar spine showed presence of a VP shunt at the lower lumbar level with possible arachnoiditis. Ms. Price has also had epidural injections by Dr. David Herrick. She has had multiple visits of therapy and chiropractics.

A review of her records shows that she had diagnosis of pseudotumor cerebri in 1975 with a VP shunt placement. The records also indicate that she had back pain dating back to, at least, January 6, 2000. She had multiple epidural injections in the lumbar spine in 2001 by Dr. Singh.

The reports of the diagnostic studies of the lumbar spine including x-rays and MRI scan before and after June 26, 2004, showed, essentially, no difference. Essentially it was found that there were mild degenerative changes in the lumbar spine and the presence of a VP shunt at the lower lumbar level. A note by Dr. Herrick on February 25, 2005, commented on the presence of small osteophytes at the C4/5 and C5/6 levels.

DeLoise Price

04/03/07

Page Four

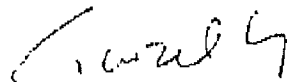
Impression: Neck pain. Low back pain. Right knee pain.

Comments/Conclusion: As far as the right knee is concerned, Dr. Maddox's findings showed that she had small tears at the medial meniscus, and also delaminated and very soft articular cartilage of the medial femoral condyle. These changes would seem to indicate that they were degenerative in origin and not post traumatic. The diagnostic studies of the cervical and lumbar spine showed degenerative changes with no sign of any fracture or disc herniation. It would appear that there was no objective evidence of any worsening of her lumbar spine after her reported accident of June 26, 2004. The cervical spine showed, according to a note by Dr. Herrick, small osteophyte at C4/5 and C5/6. These were degenerative in nature and not related to her reported trauma.

Overall, I think that there is no objective evidence of her sustaining any trauma to her cervical spine or lumbar spine after the reported accident of June 26, 2004. The changes in her right knee seen on arthroscopy are, I think, also degenerative in nature and not specifically related to the accident of June 26, 2004.

If I could be of further help in this matter, please feel free to contact me.

Sincerely,



Tai Q. Chung, M.D.

TQC/rpk

I spent a total of five hours reviewing the records, composing and reviewing this report.

cc:

